

Government changes to the family migration rules

MRN briefing paper

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Overview

On 11th June 2012, the government announced significant changes to the family migration rules in the UK. The key changes, which largely came into force on 9 July 2012, include a new income requirement of £18,600 for people wishing to sponsor a partner¹ to come to the UK, an extended period (from two to five years) before spouses and partners can apply for settlement in the UK, and a review of the application of Article 8 of the European Convention on Human Rights to immigration cases.

The new rules are preventing many thousands of people from exercising their right to a family life in the UK. They have introduced additional hurdles and costs for people, particularly lower earners, who are either British or who are settled here and wish close family members to join them in the UK. As a result, the rules are likely to further undermine the integration of some migrant communities, and to be viewed more widely as unfair as their impacts on both migrants and British people are realised.

Background

In July 2011, the government issued a set of proposals to toughen up the rules for family migration to the UK. Over 5000 people responded to the UKBA public consultation on the proposed changes - many to express their concern about the impacts of the proposed changes².

On 11th June 2012, the Home Secretary announced her final decision on reforms to family migration, and laid new immigration rules before parliament. The majority of the changes have come into force on 9 July 2012. The government estimates that the new rules will prevent between 13,700 and 18,500 applicants every year from coming to the UK in the future³. They also estimate that around 12,000 people per year will be prevented by the new income threshold from attaining settlement⁴ in the UK through the family route.

The key changes to family migration

- **New £18,600 income threshold for UK sponsors of foreign partners**

Following analysis by the Migration Advisory Committee in November 2011, the government has introduced a new minimum gross income requirement of £18,600 for those wishing to

¹ In relation to the new income threshold, the term 'partner' refers to fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner or same sex partner.

² Changes to Family Migration Rules: Impact Assessment, 12/06/2012,

² <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/fam-impact-state.pdf>

³ Changes to Family Migration Rules: Impact Assessment, 12/06/2012,

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⁴ By 'settlement', this briefing refers to Indefinite Leave to Remain in the UK

sponsor a non-EU partner to enter and settle in the UK⁵. The income requirement is higher for those applying to bring a child under the age of 18 with the partner, rising to £22,400 for one child, and an additional £2,400 for each further child. The couple needs to meet the minimum income threshold at three stages of application – when the partner applies to come to the UK, when they apply for further leave to remain after 2.5 years in the UK, and when they apply for indefinite leave to remain after five years here.

The income threshold is proving particularly difficult to meet when making an initial application to bring a partner into the UK from overseas, because the partner's overseas earnings are not taken into account. If, however, the partner is already working legally in the UK, their earnings *can be counted* towards meeting the threshold. Cash savings, other non-employment and pensions of *both* partners also count.

Once the couple is in the UK, they will still need to meet the income threshold when the partner applies for further leave to remain and settlement, but it will be easier for them to do so. UK earnings, non-employment income and savings of *both* partners count towards meeting the income requirement. No third party support will count at any stage.

What does this change mean?

This change has a significant impact on British people or those settled here who want to bring their foreign partner into the UK. According to the Migration Observatory, this prevents 47% of the UK working population from sponsoring a foreign partner (Migration Observatory, 2012).

Because of differences in earnings across different social groups, the new income requirement disadvantages women disproportionately (women are still paid, on average, 15.5% less than men in the UK⁶). It disadvantages people who live outside the South East of England, where the median gross wage stands at 116 compared to the national figure of 100. 48% of people in Scotland, and 51% of people in Wales, for example, don't qualify to bring in a family member (Migration Observatory 2012). Some ethnic minority communities find it particularly difficult to meet the requirement - over 40% of people in the Bangladeshi and Pakistani communities in the UK earn less than £7 per hour (£14,500 p.a.) compared to the white British rate of 25% (The Poverty Site, 2012). This rule change also particularly disadvantage young couples who are likely to be lower earners.

For more information on the impacts of a new income threshold on particular groups, see MRN briefing '*Keeping families apart: The impact of a new income threshold for family migration*'.⁷

- **Extension of period before non-EU spouse or partner in the UK can apply for settlement**

The government is extending what it is calling the 'probationary period' before spouses and partners from outside the EU can apply for settlement in the UK, with the intention of testing how genuine their relationships with a UK spouse or partner are. Non-EU spouses or partners in the UK on a visa issued after 9 July 2012, will need to wait for five years before they can apply for settlement here. Couples who would previously be eligible for immediate settlement here as they have lived together overseas for four or more years now also need to wait for five years in the UK before applying for settlement.

⁵ The level of the income threshold will be reviewed by the government annually.

⁶ Fawcett Society, 2012 <http://www.fawcettsociety.org.uk/index.asp?PageID=321>

⁷ http://www.migrantsrights.org.uk/files/publications/MRN-Family_migration-briefing-April_2012.pdf

The extended period before spouses and partners can apply for settlement adds additional insecurity for them, as it is broken down into two temporary visas of approximately 2.5 years each. The spouse or partner therefore needs to make three applications in order to reach settlement in the UK. They need to meet all the family route requirements, including the new minimum income requirement, at each and every stage of application. If a spouse or partner cannot meet some of the family route requirements, they may be able to apply for a new '10 year route' to settlement on the basis of their family life in the UK. The new '10 year route' allows them to work in the UK but not to receive public funds.

What does this change mean?

We think that prolonging the period of temporary residence in the UK for spouses and partners, rather than achieving the government's goal of reducing 'sham' marriages, has the overall effect of increasing the insecurity of all families seeking to settle in the UK. By requiring spouses and partners to reapply for extended temporary leave before being able to move to indefinite leave to remain in the UK, the government will cause additional costs, uncertainty and worry for spouses and partners, rather than moving them to a point of security in the UK. The government is sending the wrong message to couples by describing this as a 'probationary' period. Those who have already met the requirements to come to the UK as part of a genuine couple should be supported when here, in order to support their wider integration.

The introduction of a new 10 year route to settlement is a safety net of sorts for spouses and partners who fall short of meeting the new requirements before they reach settlement in the UK. However it is not a substitute for bringing people to a point of security quickly and clearly in the UK.

Other significant changes:

Requiring partner applicants to take an intermediate level (B1) English language test and the 'life in the UK' test

From October 2013, all applicants for settlement, including partners, PBS migrants and others, will be required to pass the Life in the UK test and a speaking and listening qualification at intermediate level (B1) or above. People who can't meet these requirements will be able to apply for further temporary leave to give them time to improve their language and knowledge skills before reapplying.

Measures to tackle 'sham' marriages

The government has backed down from a number of its problematic proposals to tackle 'sham' marriages in the UK - in particular it hasn't introduced a controversial 'attachment requirement' for overseas applicants. The UKBA will be releasing new guidelines for caseworkers which list 'factors associated with genuine and non-genuine relationships' in order to inform decision-making. Other measures, such as increased enforcement activity around suspicious marriages, remain under consideration.

Removal of the full right of appeal for people refused family visit visas

The full right of appeal for people refused family visit visas is expected by the government to be removed from all family visitors through the Crime and Courts Bill by January 2014. From July 2012, the full right of appeal for these visas has been restricted to those coming to visit a close family member who has settled, refugee or protection status. Aunts, uncles, nephews, nieces or first cousins are not able to appeal refusals of family visit visa applications as of July 2012⁸.

⁸ Briefing updated July 2nd 2012

Extension of the period before Points Based System (PBS) dependents can apply for settlement in the UK

People coming to the UK as the partner of a migrant under the Points Based System will be required to wait for five years before they can apply for settlement in the UK. This covers all new applications made on or after 9 July 2012.

Restrictions on the ability of non-EEA adults and elderly dependent relatives to enter and settle in the UK

People wishing to bring elderly dependent relatives to the UK are only able to settle in the UK if they can demonstrate that, as a result of age, illness or disability, they require a level of long-term personal care that can only be provided in the UK by their relative here, and without recourse to public funds. Aunts and uncles are no longer eligible to come under this route, and applications have to be made from overseas rather than the UK.

Will the changes affect me, and where can I get more information about them?

If you are concerned about whether these rules affect you or a family member, you can get more information in the following ways:

- Read the government statement of intent which gives more detail on the changes and the way they have been introduced. Visit the Home Office website.
- Seek legal advice for specific guidance on how the rule changes could affect you. Find a list of potential sources of advice on the MRN website here: <http://www.migrantsrights.org.uk/about/advice-services>

Can I get involved in campaigning on this issue?

- You can write to your MP using the WriteToThem website (<http://www.writetothem.com/>) and ask him/her for a face-to-face meeting in your local area to discuss the effects of these rules.
- For media enquiries contact Jan Brulc at the Migrants' Rights Network (j.brulc@migrantsrights.org.uk or 020 7336 9429).